

## **SURPLUS LINES INSURANCE TRANSACTIONS RULES**

### **Preliminary copy**

These rules were adopted on October 30, 2009, with the exception of ARM 6.6.2801, which will be adopted on November 13, 2009, due to a correction notice filed on November 2, 2009. The formatted version of these replacement pages will be filed with the Secretary of State on December 31, 2009.

**6.6.2801 PURPOSE AND SCOPE** (1) In accordance with 33-2-301 et seq., MCA, the commissioner declares that the purpose of these rules is to implement Title 33, chapter 2, part 3, MCA. ARM 6.6.2801 through 6.6.2810 implement 33-2-301, et seq., MCA, the surplus lines insurance law. (History: 33-1-313, 33-2-316, MCA; IMP, 33-2-301, 33-2-302, 33-2-303, 33-2-304, 33-2-305, 33-2-306, 33-2-307, 33-2-308, 33-2-309, 33-2-310, 33-2-311, 33-2-312, 33-2-313, 33-2-314, 33-2-315, 33-2-316, 33-2-317, 33-2-321, 33-2-326, MCA; NEW, 1990 MAR p. 218, Eff. 1/26/90; AMD, 2009 MAR p. 2005, Eff. 11/13/09.)

**6.6.2802 DELEGATION OF AUTHORITY** (REPEALED) (History: 33-1-313, 33-2-316, MCA; IMP, 33-2-301 through 33-2-326, MCA; NEW, 1990 MAR p. 218, Eff. 1/26/90; REP, 2009 MAR p. 2005, Eff. 10/30/09.)

**6.6.2803 FILING OF SUBMISSIONS, EXAMINATION OF SUBMISSIONS AND RECORDS RETAINED** (1) Every Montana licensed surplus lines producer shall submit to the department all information required to be filed by 33-2-301, et seq., MCA, and these rules.

(2) Surplus lines submissions to the department shall be made by Montana-licensed surplus lines producers and shall be made in a manner and form approved by the commissioner. There is a standardized submission form available from the department. Submissions may be made by:

- (a) sending paper submissions to the department; or
- (b) electronically filing submissions via the surplus lines business portal via the department's web site.

(3) All surplus lines submissions must be made to the department within 60 calendar days of the effective date of the policy.

(4) All surplus lines submissions must be complete. Incomplete submissions will not be accepted by the department, and will be returned for correction and resubmission within the foregoing 60 calendar day deadline from the effective date of the policy. If the 60 calendar day deadline has passed when the incomplete submission is returned, the surplus lines insurance producer shall resubmit the corrected submission form within ten calendar days from the date the department rejected the incomplete submission.

(5) For electronically filed submissions, the producing insurance producer shall keep a true and correct copy of the notarized affidavit section of the paper submission form showing the original signatures of the producing insurance producer and the notary regarding the diligent search and the information provided to the insured under 33-2-310, MCA. The producing insurance producer shall provide a true and correct copy of the notarized affidavit section of the submission form to the surplus lines insurance producer. These records shall be retained by the producing insurance producer and the surplus lines insurance producer for five years after the issuance of the surplus lines insurance policy to which they relate, and shall be subject to inspection by the department in accord with 33-2-310, MCA.

(6) Surplus lines insurance producers shall retain records of, and supporting

documentation for, all inspection fees charged to insureds under 33-2-306, MCA, and any assessment, membership, or similar fee or charge to insureds to obtain surplus lines insurance if such assessment, membership, or similar fee or charge was payable separately by the insured in consideration of the policy.

(7) Producing insurance producers and surplus lines insurance producers may create and retain electronic records to meet the records retention requirements in (5) and (6), provided that the electronic records are:

(a) archival in nature, such as a scanned copy, so as to preclude the alteration of the record after it is initially stored in the electronic medium; and

(b) capable of duplication to a paper copy that is as legible as the original.

(History: 33-1-313, 33-2-316, MCA; IMP, 33-2-301, 33-2-302, 33-2-303, 33-2-305, 33-2-306, 33-2-307, 33-2-308, 33-2-310, 33-2-311, 33-2-312, 33-2-313, 33-2-316, 33-2-321, 33-2-326, MCA; NEW, 1990 MAR p. 218, Eff. 1/26/90; AMD, 2009 MAR p. 2005, Eff. 10/30/09.)

6.6.2804 COLLECTION OF STAMPING FEE (1) Pursuant to 33-2-321(5), MCA, the department shall collect a stamping fee on the base premium, including any monied endorsement, payable for each surplus lines insurance policy transacted in the state.

(2) The stamping fee is equal to:

(a) one percent of the base premium for paper (hard copy) submissions; and

(b) one-half percent of the base premium for electronically filed submissions via the surplus lines business portal via the department's web site:

(i) subsection (2)(b) will be effective January 1, 2010. Before January 1, 2010, any electronically filed submissions via the surplus lines business portal via the department's web site will be assessed a stamping fee of one percent of the base premium.

(3) Such stamping fee shall be earned in full as soon as any portion of the premium payable for the underlying policy is earned. The commissioner may, by rule, set the stamping fee commensurate with the department's expenses for implementing the surplus lines insurance law, 33-2-301, et seq., MCA.

(4) Because such stamping fee does not constitute "consideration for insurance" within the meaning of 33-15-102, MCA, and thus does not constitute part of the premium for surplus lines insurance, a surplus lines insurance producer may collect such stamping fee from the insured in addition to the premium payable in consideration for the insurance contract. Nothing in this rule shall operate to exclude any other assessment, membership, inspection, or similar fee or charge from the definition of "premium" contained in 33-15-102, MCA.

(5) Both the base premium and the stamping fee of every policy of surplus lines insurance transacted in this state shall appear on the policy's declarations page and be clearly disclosed as such.

(6) For paper (hard copy) submissions, the stamping fee information on the declarations page of the surplus lines insurance policy will disclose that the stamping fee would be less, and the percentage of the base premium to calculate the stamping fee, if the submission were filed electronically:

(i) section (6) will be effective January 1, 2010.

(7) For the purposes of collecting this stamping fee only, any assessment, membership, inspection, or similar fee or charge payable separately by the insured in consideration of the policy shall be excluded from calculations of the base premium. Designation of a base premium for purposes of calculating the stamping fee shall not operate to exclude from the definition of "premium" contained in 33-15-102, MCA, any assessment, membership, inspection, or similar fee or charge in

consideration of that surplus lines insurance policy.

(8) The department shall collect a penalty from any surplus lines insurance producer who does not pay the stamping fees by April 1 for all transactions during the preceding year. Such penalty shall equal 25 percent of the amount overdue plus 1.5 percent per month from the time of delinquency until the stamping fees are paid in full. (History: 33-1-313, 33-2-316, MCA; IMP, 33-2-301, 33-2-302, 33-2-303, 33-2-305, 33-2-306, 33-2-307, 33-2-308, 33-2-310, 33-2-311, 33-2-312, 33-2-313, 33-2-316, 33-2-321, MCA; NEW, 1990 MAR p. 218, Eff. 1/26/90; AMD, 2009 MAR p. 2005, Eff. 10/30/09.)

6.6.2805 ORGANIZATION AND DUTIES OF SURPLUS LINES ADVISORY ORGANIZATION (REPEALED) (History: 33-1-313, 33-2-316, MCA; IMP, 33-2-301 through 33-2-326, MCA; NEW, 1990 MAR p. 218, Eff. 1/26/90; REP, 2009 MAR p. 2005, Eff. 10/30/09.)

6.6.2806 OPERATING EXPENSES (REPEALED) (History: 33-1-313, 33-2-316, MCA; IMP, 33-2-301 through 33-2-326, MCA; NEW, 1990 MAR p. 218, Eff. 1/26/90; REP, 2009 MAR p. 2005, Eff. 10/30/09.)

6.6.2807 MEMBERSHIP IN SURPLUS LINES ADVISORY ORGANIZATION (REPEALED) (History: 33-1-313, 33-2-316, MCA; IMP, 33-2-301 through 33-2-326, MCA; NEW, 1990 MAR p. 218, Eff. 1/26/90; REP, 2009 MAR p. 2005, Eff. 10/30/09.)

6.6.2808 ELIGIBLE SURPLUS LINES INSURERS LIST (1) At least semiannually, the department shall make available a complete current list of eligible surplus lines insurers approved by the commissioner. (History: 33-1-313, 33-2-316, MCA; IMP, 33-2-301, 33-2-302, 33-2-303, 33-2-305, 33-2-306, 33-2-307, 33-2-308, 33-2-310, 33-2-311, 33-2-312, 33-2-313, 33-2-316, 33-2-321, 33-2-326, MCA; NEW, 1990 MAR p. 218, Eff. 1/26/90; AMD, 2009 MAR p. 2005, Eff. 10/30/09.)

6.6.2809 APPROVED RISK LIST -- INSURANCE PRESUMED UNOBTAINABLE FROM AUTHORIZED INSURERS (1) At least semiannually, the commissioner shall make available a list of the kinds of insurance which are presumed to be unobtainable from authorized insurers, known as the approved risk list.

(2) The commissioner, in consultation with the surplus lines insurance producer association domiciled in Montana, shall appoint a five-member committee to compile a proposed approved risk list for consideration by the commissioner. The committee shall consist of four Montana-licensed surplus lines insurance producers and one staff member of the department, each serving until replaced by the commissioner.

(3) The committee shall meet at least semiannually, in person or by teleconference, and shall make reasonable efforts to verify that the risks included on its proposed approved risk list cannot be obtained from authorized insurers.

(4) The committee shall submit a new proposed approved risk list to the commissioner for approval on or before December 1 and June 1 of each year, and once approved the list shall be effective for the immediately following period January 1 through June 30, or July 1 through December 31, respectively. At the commissioner's request, the committee shall submit a new proposed approved risk list in addition to the regularly scheduled semiannual lists, and once approved such additional list shall be effective for the remainder of the period January 1 through

June 30, or July 1 through December 31, within which it was approved. The commissioner may add or delete risks from the proposed approved risk list submitted by the committee. Unless the commissioner expressly disapproves or alters the proposed approved risk list within 30 days after its submission, it shall be deemed approved.

(5) Once approved, the list shall constitute a conclusive presumption within the meaning of 33-2-302, MCA, that any kind of insurance appearing thereon cannot be obtained from authorized insurers and does not require a diligent search by a licensed surplus lines insurance producer. (History: 33-1-313, 33-2-316, MCA; IMP, 33-2-301, 33-2-302, 33-2-303, 33-2-305, 33-2-306, 33-2-308, 33-2-310, 33-2-311, 33-2-312, 33-2-313, 33-2-316, 33-2-321, MCA; NEW, 1990 MAR p. 218, Eff. 1/26/90; AMD, 2009 MAR p. 2005, Eff. 10/30/09.)

6.6.2810 ANNUAL STATEMENT (1) The department shall produce for each surplus lines insurance producer, in a form approved by the commissioner, an annual report complying with the requirements of 33-2-310(2), MCA, for a surplus lines insurance producer's annual statement. The department shall distribute such annual reports to surplus lines insurance producers prior to March 1 of each year for their review and submission to the commissioner. Nothing in this section or in the annual report prepared by the department shall relieve a surplus lines insurance producer from the duties imposed by 33-2-310, MCA, and 33-2-311, MCA. (History: 33-1-313, 33-2-316, MCA; IMP, 33-2-301, 33-2-302, 33-2-303, 33-2-305, 33-2-306, 33-2-307, 33-2-308, 33-2-310, 33-2-311, 33-2-312, 33-2-313, 33-2-315, 33-2-316, 33-2-321, MCA; NEW, 2009 MAR p. 2005, Eff. 10/30/09.)